DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 98-36
of Regulatory Fees for	)	
Fiscal Year 1998	)	

REPLY COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits this reply to the comments filed regarding the above-referenced NPRM..

DISCUSSION

If one message comes through in the comments, it is that the regulatory fee proposed to be assessed against geostationary space station operators, $119,000 per space station, is far out of proportion to the actual costs of regulating GSO satellites once they are licensed.[1] As Columbia succinctly put it, it is "evident that the methodology that the Commission has used is defective in critical respects because the proposed geostationary space station fee is not consistent with any rationale measure of the actual administrative costs attributable to regulating existing geostationary FSS licensees."[2] There is simply no escaping the fact that the Commission engages in precious little regulation of licensed space stations.

In the absence of access to the actual data upon which the Commission's cost calculations are based, the three most likely explanations for the misallocation of costs to space station operators are that: (1) costs for satellite application processing are being incorrectly assigned to a feeable cost category; (2) costs associated with new satellite services are being assigned to existing licensees; and/or (3) costs incurred regulating the international activities of Comsat Corporation ("Comsat") are not being recovered from Comsat, but are being borne by Comsat's private satellite

---

1 See Comments of Columbia Communications Corporation ("Columbia") at 2-4; Comments of Loral Space & Communications Ltd. ("Loral") at 2-3; Comments of GE American Communications, Inc. ("GE Americom") at 3-4.

2 Comments of Columbia at 3.

competitors. To the extent that any or all of these misallocations are, in fact, occurring, the Commission should take prompt remedial measures.

I. Satellite Operators Should Not Double Pay For Application Processing.

The Commission should take steps to ensure that International Bureau employees do not account for time spent on satellite application processing as feeable space station regulatory activity. As Orbital Communications Corporation notes in its comments, the misallocation of satellite application costs to a feeable cost category results in a "double recovery" of the costs in that the Commission already collects significant satellite application fees.[3] Thus, the Commission's cost accounting system should be fine-tuned to segregate satellite application processing work from regulatory activities pertaining to licensed satellite operations.

II. Activities Directed Toward New Space-Based Services Should Not Be Paid For Solely By Existing Satellite Licensees.

Second, as Columbia explained in its comments, the costs of rulemaking and international activities related to new space-based services "cannot fairly be imputed to operators of existing geostationary FSS systems."[4] To the extent that the current fee proposal would do so, it would, in effect, "assess companies a tax in order to promote the advent of new competitors to their existing services."[5]

It is a fallacy to suggest that the regulatory costs of establishing a new service should be borne by existing satellite licensees merely because the new service involves satellites. It is just as likely, or more so, that an outsider will seek authority to provide a new satellite service as it is that an incumbent satellite system operator will. For example, the initial "separate system" operators — PanAmSat, Columbia, and Orion — all came from outside the ranks of the established domestic satellite operators. Similarly, the first round Big LEO and Little LEO licensees were satellite newcomers.

Satellites, moreover, are not all alike, nor can they be switched on command to new frequency bands or to provide new services. The Commission should, therefore, treat regulatory costs incurred in establishing new services, regardless of

---

[3] Comments of Orbcomm at 2.

[4] Comments of Columbia at 4.

[5] Id.

the technology employed, as overhead and recover those costs proportionally from all fee payors.

III. Comsat Should Be Required To Pay The Costs Of Signatory Regulation.

PanAmSat agrees with Columbia that the Commission should not permit Comsat, which has exclusive access to and from the United States to the world's largest fleet of satellites, and which consumes substantial Commission resources in the regulation of its international satellite activities, to avoid the space station fee.[6]

Comsat is not exempt from regulatory fees. Section 9 of the Communications Act, which governs the regulatory fee program, requires the Commission to recover the costs of regulating entities within its jurisdiction.[7] Comsat is unquestionably within the Commission's jurisdiction; it is "fully subject to the provisions of Title II and Title III of [the Communications] Act."[8] Comsat files applications pursuant to Title II and Title III to provide services via Intelsat and Inmarsat satellites, and it pays the same application fee for "[s]pace [s]tations"[9] as do non-Signatory applicants. It also cannot be gainsaid that the Commission expends considerable resources participating in the Comsat instructional process, regulating Comsat investments in Intelsat and Inmarsat satellites, and regulating Comsat's common carrier activities.[10]

Nonetheless, the Commission has so far declined to impose space station fees upon Comsat. It has done so based on language in a committee report suggesting that Congress intended for space station fees to be assessed in a manner that is consistent with FCC jurisdiction. On this basis the Commission has concluded that, "Congress did not intend for the Commission to assess a fee per space station for the space segment facilities of Intelsat and Inmarsat [and] we will not require Comsat ... to submit fee payments for their satellites."[11] The time has come to reexamine this conclusion.

---

6 See Comments of Columbia at 8-9.

7 See 47 U.S.C. § 159(a)(1).

8 Id. § 741.

9 Id. § 158.

10 In 1996, the Commission determined that almost 15% of the costs attributed to space station regulatory oversight was directly related to Comsat's Signatory activities. See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd 18774 (1996).

11 Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd 13512 (1995).

As the Commission itself has recognized, "the costs of [regulatory] activities related to the signatories should be recovered directly from the U.S. Signatories rather than from space station licensees generally."[12] The Commission's first attempt to effectuate this policy, however, by establishing a separate Signatory fee, was overturned by the D.C. Circuit.[13] The flaw in the Commission's effort, the court concluded, was that the Commission had failed to identify a change in law or Commission policy that warranted the creation of a new category in the fee schedule. The court did not, however, hold that Comsat was exempt from regulatory fees or that the Commission should refrain from applying the existing categories of regulatory fees to Comsat.

It is tautological that the best evidence of Congressional intent can be found in the language of a statute. In this case, the statute is crystal clear: Section 9 does not exempt Comsat from regulatory fees.

The passage in the committee report upon which the Commission has relied in the past cannot support a contrary construction of the statute. The Supreme Court has cautioned that courts and agencies should not give "authoritative weight to a single passage of legislative history that is in no way anchored in the text of the statute."[14] Against the express statutory command to collect space station fees, therefore, little or no weight should be given to a single sentence in a House Committee Report incorporating "[t]o the extent applicable, the appropriate provisions" of an earlier House Committee Report regarding an unenacted bill.[15] The earlier House Report, in turn, notes that the Committee intended for the fees in the space station category to be assessed "consistent with FCC jurisdiction.... Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act."[16]

To the extent that this portion of the legislative history was "applicable," and therefore incorporated into the legislative history of the bill that eventually became Section 9, it appears that the intent merely was to ensure that the Commission did not assess immune organizations directly for space station fees. This, at best

---

12 Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 11 FCC Rcd 16515 (1996).

13 See Comsat Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997).

14 Shannon v. United States, 114 S. Ct. 2419, 2426 (1994).

15 See H.R. Conf. Rep. 103-213.

16 H.R. Rep. 102-207, 102d Cong., 1st Sess. 26.

ambiguous, patchwork of legislative history certainly should not drive the Commission inexorably to the conclusion that Comsat is exempt from space station fees in the face of a statute that unambiguously requires otherwise.

Indeed, the House committee that has jurisdiction over the Commission has stated that the Commission does have authority to collect space station regulatory fees from Comsat. Section 643(c) of the Communications Satellite Competition and Privatization Act of 1998, H.R. 1872, which is pending before Congress, provides that "[n]otwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services." The Commerce Committee Report on this bill explains that "the Committee believes that the Commission currently has the statutory authority to impose such fees but wishes to make explicit here that the Commission does indeed have such authority."[17]

The Commission should, therefore, revisit the issue of requiring Comsat to pay the costs of Signatory regulation and, consistent with Section 9, assess Comsat for space station fees.[18]

IV. The Commission Should Not Extend The International Bearer Circuit Fee To Non-Common Carrier Satellite Operators.

If the Commission continues to exempt Comsat from space station fees, it should, at minimum, abandon its proposal to make private space station operators pay international bearer circuit fees. As Columbia explained in its comments, "[t]o impose both the space station and common carrier fees upon private satellite carriers, and only the common carrier/bearer circuit fee on Comsat is grossly inequitable, imposing dramatically higher fees on private carriers than is warranted, while substantially undercharging Comsat."[19]

---

[17] H.R. Rep. 105-494, 105th Cong., 2d Sess. 63.

[18] In the alternative, neither the legislative history of Section 9 nor the D.C. Circuit's decision in Comsat v. FCC, should discourage the Commission from reestablishing the Signatory fee category following an appropriate administrative procedure. Recent changes in Commission policy provide ample basis for eliminating the regulatory disparity created by Comsat's exemption from paying the full costs of Signatory regulation by the Commission. See, e.g., In re Comsat Corporation, Order and Notice of Proposed Rulemaking, File Mos. 60-SAT-ISP-97, *et al.*, (rel. Apr. 28, 1998).

[19] Comments of Columbia at 9.

Indeed, as several parties noted in their comments, the proposal in the NPRM to require non-common carrier satellite operators to pay regulatory fees for international bearer circuits contravenes the statute.[20] Section 9 provides that "carriers" are to pay regulatory fees based upon the number of international bearer circuits they provide. The Communications Act further provides that "carrier" means "common carrier" or "a person engaged as a common carrier for hire."[21] The Commission lacks authority, therefore, to extend these "common carrier" fees to private satellite licensees.[22]

CONCLUSION

For the reasons set forth above and in its comments, PanAmSat requests that the Commission lower the regulatory fee to be paid by geostationary space station operators and revise its regulatory fee schedule to exclude from the "International Bearer Circuit" fee category bearer circuits provided by non-common carrier satellite operators. Further, however, the Commission should include Comsat within the entities responsible for paying space station fees or otherwise ensure that the costs of regulating Comsat are not borne by private satellite operators.

Respectfully submitted,
PANAMSAT CORPORATION

/s/ Joseph A. Godles
Joseph A. Godles

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900
Its Attorneys

May 4, 1998

---

20 See, e.g., Comments of Loral at 4-5; Comments of Columbia at 7-8.

21 See Comments of Loral at 4 (citing 47 U.S.C. § 153(10)).

22 The Commission's consideration of this issue is not foreclosed by the fact that it considered the same issue in the context of last year's fee rulemaking proceeding. There is no time limit on determining whether an agency rule is contrary to the agency's governing statute. Association of American Railroads v. ICC, 846 F.2d 1465, 1473 (D.C. Cir. 1988); see also Graceba Total Communications, Inc. v. FCC, 115 F.3d 1038, 1040 (D.C. Cir. 1997) ("We permit both constitutional and statutory challenges to an agency's application or reconsideration of a previously promulgated rule, even if the period for review of the initial rulemaking has expired.").

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of PanAmSat Corporation was sent by first-class mail, postage prepaid, this 4th day of May, 1998, to each of the following:

Lon Levin
Gerald Mussarra
Clayton Mowry
Satellite Industry Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

Sue D. Blumenfeld
Jennifer D. McCarthy
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Raul R. Rodriguez
David S. Keir
Leventhal, Senter & Lerman, PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004

Philip V. Otero
Senior Vice President and General
Counsel
GE American Communciations, Inc.
Four Reasearch Way
Princeton, NJ 08540

Stephen L. Goodman
Halprin, Temple, Goodman & Sugrue
Suite 650 East Tower
1100 New York Avenue, NW
Washington, DC 20005

Robert A. Mansbach
Warren Y. Zeger
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

/s/ Hema Patel
Hema Patel